

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:12-cv-00369-MR-DLH**

BILLIE JEAN POWELL, )  
                        )  
Plaintiff,            )  
                        )  
vs.                    )  
                        )  
CAROLYN W. COLVIN, Acting )  
Commissioner of Social Security, )  
                        )  
Defendant.            )  
                        )  
\_\_\_\_\_  
                        )

**O R D E R**

**THIS MATTER** is before the Court on the Plaintiff's Motion for Summary Judgment [Doc. 12]; the Defendant's Motion for Summary Judgment [Doc. 14]; the Magistrate Judge's Memorandum and Recommendation [Doc. 16] regarding the disposition of those motions; and the Plaintiff's Motion to Dismiss Civil Action, Pursuant to Rule 41(a)(2) Federal Rules of Civil Procedure [Doc. 17].

Pursuant to 28 U.S.C. § 636(b) and a specific Order of referral of the District Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider the summary judgment motions

pending in the above-captioned action and to submit to this Court a recommendation for the disposition of these motions.

On August 5, 2013, the Magistrate Judge filed a Memorandum and Recommendation [Doc. 16] in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding the motions [Docs. 12 and 14]. The Magistrate Judge further directed Plaintiff's counsel to show cause in writing why the Court should not sanction him pursuant to Rule 11 of the Federal Rules of Civil Procedure and/or the inherent power of the Court. [Doc. 16]. The parties were further advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service.

Instead of objecting to the Memorandum and Recommendation, the Plaintiff now moves to dismiss this action with prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, on the grounds that counsel has concluded that "it is not a good expenditure of the Court's time to further evaluate the claim of the Plaintiff." [Doc. 17 at 1].

After a careful review of the Magistrate Judge's Memorandum and Recommendation [Doc. 16], the Court finds that the proposed findings of fact are correct and that the proposed conclusions of law are consistent

with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation that the Defendant's Motion for Summary Judgment be granted and that the decision of the Commissioner be affirmed. The Plaintiff's Motion to Dismiss is rendered moot.

**IT IS, THEREFORE, ORDERED** that the Magistrate Judge's Memorandum and Recommendation [Doc. 16] is **ACCEPTED**; the Plaintiff's Motion for Summary Judgment [Doc. 12] is **DENIED**; the Defendant's Motion for Summary Judgment [Doc. 14] is **GRANTED**; and the decision of the Commissioner is **AFFIRMED**. This case is hereby **DISMISSED WITH PREJUDICE**.

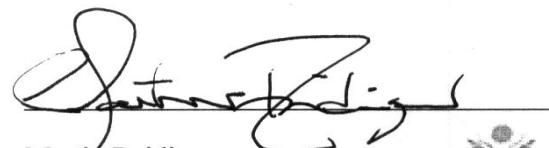
**IT IS FURTHER ORDERED** that the Plaintiff's Motion to Dismiss [Doc. 17] is **DENIED AS MOOT**.

**IT IS FURTHER ORDERED** that the issue of whether Plaintiff's counsel should be sanctioned pursuant to Rule 11 and/or the inherent power of this Court is hereby **RESERVED** for resolution by Magistrate Judge Howell.

A judgment shall be entered simultaneously herewith.

**IT IS SO ORDERED.**

Signed: August 16, 2013



Martin Reidinger  
United States District Judge

